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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 WEBOOST MEDIA S.R.L., a Societa a ) Case No.: 3:13-cv-05304 SC  
14 responsabilita limitata, )  
15 ) **DEFENDANTS' MOTION TO**  
16 Plaintiffs, ) **DISMISS AND FOR PARTIAL**  
17 ) **SUMMARY JUDGMENT**  
18 v. )  
19 ) Date: June 6, 2014  
20 LOOKSMART LTD., a Delaware ) Time: 10:00 a.m.  
21 corporation, and DOES 1 through 100, ) Loc: Courtroom 1, 17<sup>th</sup> Floor  
22 Defendants. )  
23 )  
24 )  
25 )  
26 )  
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28 )

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

It its original complaint, Plaintiff WEBOOST MEDIA S.R.L. (“WeBoost”) stated causes of action against defendant LOOKSMART LTD. (“LookSmart”) for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, Fraudulent Concealment, Negligent Interference With Prospective Economic Advantage, Intentional Interference With Prospective Economic Advantage, Intentional Interference With Contractual Relations and Violation of Cal. Bus. & Prof. Code § 17200 (“UCL”).

The terms and conditions of the contract (“T&C”) that WeBoost alleged these causes of action arose from limits the parties’ recoverable damages as follows “UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES. *See* Complaint Ex. A, Pg. 2 and First Amended Complaint (“FAC”) Ex. A, Pg. 2. Furthermore, the contract limits the parties’ liability to “THE TOTAL AMOUNT PAID OR PAYABLE . . . TO LOOKSMART UNDER THIS AGREEMENT.”

LookSmart filed a motion to dismiss the original complaint and in the alternative for partial summary judgment. This Court granted in part LookSmart’s motion and dismissed WeBoost’s negligent and intentional interference, fraudulent concealment, and UCL claims, finding that they were barred by the economic loss rule. Further, this Court ruled that “regardless of whether Plaintiff is ultimately able to recover on a tort or contract claim, Section 8 would cap Plaintiff’s damages to the amount it paid under the contract.” February 28, 2014 Order 13:13. This Court granted WeBoost “leave to amend these claims if it can state facts indicating

1 that the claims would not be subject to the economic loss rule.” *Id.* @ 12:3.

2 Ignoring this Court’s Order and the economic loss rule, WeBoost filed a  
3 First Amended Complaint (“FAC”) stating the same causes of action and no new  
4 facts indicating that the claims would not be subject to the economic loss rule.  
5 Plaintiff’s FAC does include some new paragraphs. *See* FAC 22-31, 50-51, 60 &  
6 67. But, these purported new “click fraud” allegations are merely a repackaging of  
7 the same old “click fraud” allegations and do not arise independently of the breach  
8 of contract claims. The basis of every allegation is that LookSmart breached its  
9 **contractual** representation to invoice Plaintiff only for legitimate clicks. Even if  
10 these new allegations were true (which they are not), LookSmart’s obligations  
11 regarding pay-per-click traffic arose exclusively from the contract. These two  
12 sophisticated parties reached a bargain allocating the risks of doing business,  
13 expressly including provisions for “click fraud” in the contract and the provisions  
14 that displace tort duties with regard to LookSmart’s obligations under the contract.

15 Accordingly, by this motion LookSmart seeks to dismiss with prejudice  
16 WeBoost’s causes of action for Fraudulent Concealment, Negligent Interference  
17 With Prospective Economic Advantage, Intentional Interference With Prospective  
18 Economic Advantage, Intentional Interference With Contractual Relations and  
19 Violation of Cal. Bus. & Prof. Code § 17200. Further, LookSmart seeks a partial  
20 summary judgment Order limiting the parties’ liability to the total amount  
21 WeBoost paid LookSmart under the contract.

## 22 II. FACTS

23 Defendant is a publicly traded online advertising company. FAC ¶ 7<sup>1</sup>. It acts  
24 as an intermediary between online "publishers," which provide content from which  
25

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26 <sup>1</sup> Please note that this Facts Section virtually repeats the “Background” facts stated by the Court  
27 in its February 28, 2014 Order because the FAC is virtually identical to the original complaint.  
28 Where new facts are alleged in the FAC, it is noted in this Fact Section.

1 they hope to generate ad revenue, and "advertisers," which promote products  
2 online via ads placed on publishers' websites. *Id.* Intermediaries like Defendant  
3 help advertisers place ads on publishers' websites, in exchange for a fee. *See Id.* In  
4 addition to serving as an intermediary, LookSmart maintains its own network of  
5 affiliate websites, which it uses to display advertisements from other companies in  
6 order to generate revenue. *Id.* ¶ 8. As part of its business relationship with  
7 WeBoost, LookSmart acted both as publisher and intermediary. *Id.*

8 The online advertising model relevant to this case is called "pay-per-click."  
9 *Id.* ¶ 7. In this model, advertisers place their ads on publishers' websites and are  
10 charged a fixed sum each time a user clicks the ad. *Id.* ¶ 9. Part of this "pay-per-  
11 click" fee is then paid to the publisher on whose website the ad appeared, and part  
12 goes to the intermediary that helped to place the ad. *Id.*

13 Plaintiff owns and operates an international network of websites. *Id.* ¶ 11. In  
14 the online advertising ecosystem, Plaintiff is primarily a publisher, and its primary  
15 source of income is the revenue generated through the placement of ads on its  
16 websites. *Id.* Plaintiff entered a contract with Defendant under which Defendant  
17 would act as both intermediary and publisher. *Id.* ¶ 17. Defendant, like Plaintiff,  
18 owns a network of websites, and as part of the contract it agreed to display ads  
19 promoting Plaintiff's website network on its own websites. *Id.* Plaintiff agreed to  
20 pay Defendant based on the total number of clicks on those ads, and Defendant  
21 agreed to invoice Plaintiff each month, listing the number of clicks and the total  
22 amount owed. *Id.* The price per click varied depending on the market, but it ranged  
23 between \$0.01 and \$0.05. *Id.*

24 Though it is not a party to this lawsuit, Google and its businesses are highly  
25 relevant to this case. Google is the biggest intermediary in the pay-per-click  
26 advertising market. *Id.* ¶ 10. In this capacity it operates a service called Google  
27 AdSense. *Id.* Publishers use Google to help them place appropriate ads on their

1 websites, and per the usual publisher-advertiser-intermediary relationship, Google  
2 and the publishers share pay-per-click revenue. *Id.* Publishers usually receive  
3 between 51 and 68 percent of this revenue, and Google takes the remainder. *Id.*  
4 Plaintiff was a Google AdSense customer. *Id.* ¶ 12. Google was Plaintiff's most  
5 important intermediary partner before Plaintiff contracted with Defendant. *Id.* As  
6 part of that arrangement, Plaintiff received the standard 51 to 68 percent of pay-  
7 per-click revenue, with Google taking the rest, though Google was also able to  
8 deduct more money from Plaintiff's AdSense account if it determined that ad clicks  
9 originating from Plaintiff's websites were illegitimate. *Id.* These illegitimate clicks  
10 are called "click fraud" in the online ad industry. *Id.*

11 Click fraud is a type of fraud by which a person or computer program  
12 initiates a "click" on an ad, solely to generate the fees resulting from pay-per-click  
13 advertising models -- not to view the ad's underlying content. *Id.* ¶ 13. Advertisers  
14 get no benefit from this behavior, since there is no chance for them to convert a  
15 click to a sale, but the publishers and intermediaries still get paid per click. *Id.*  
16 Click fraud is a risk for online advertising publishers because, as Defendant noted  
17 in a recent 10-K filing, publishers on whose sites a person or program initiates  
18 click fraud must sometimes issue credits or refunds to advertisers or pay revenue  
19 share to distribution network partners. *Id.* ¶ 14. This hurts the publishers'  
20 profitability and branding. *Id.*

21 As Defendant stated in that 10-K, it had previously been subject to advertiser  
22 complaints and litigation regarding click fraud, and it anticipated continuing to  
23 respond to such behavior. *Id.* Some small percentage of click fraud is considered  
24 unavoidable and tolerated within the pay-per-click ad industry, though Plaintiff  
25 states that prior to its agreement with Defendant, its monthly deductions for pay-  
26 per-click traffic that Google considered illegitimate averaged less than .5 percent  
27 of the total pay-per-click traffic generated on Plaintiff's websites. *Id.* ¶ 16.



1 Plaintiff entered the contract with Defendant around October 31, 2011. *Id.* ¶  
2 17. As part of this contract, Plaintiff signed Defendant's standard "Terms and  
3 Conditions" ("T&C"). FAC. Ex. A (also called the "Agreement"). Between  
4 December 2011 and June 2012, Plaintiff paid Defendant \$105,273.92, pursuant to  
5 seven invoices. *Id.* ¶ 18. Throughout this time, Plaintiff believed it was paying  
6 Defendant for legitimate pay-per-click traffic, not for fraudulent clicks. *Id.*  
7 However, around May 2012, Plaintiff became aware that a "significant portion" of  
8 the clicks for which Defendant was billing were being identified by Google as  
9 click fraud. *Id.* ¶ 19. Between April and July 2012, Google deducted nearly  
10 \$250,000 from Plaintiff's AdSense account due to suspicious click fraud activity,  
11 substantially all of which came from websites affiliated with Defendant. *Id.*<sup>2</sup>

12 Then, around July 3, 2012, Google informed Plaintiff that an additional  
13 \$191,000 in gross revenue (the amount prior to Google taking its share) was being  
14 deducted from Plaintiff's AdSense account due to click fraud originating on  
15 Plaintiff's website [www.pay-it-less.co.uk](http://www.pay-it-less.co.uk). *Id.* This deduction led to a loss of  
16 \$130,000 for Plaintiff. *Id.* Plaintiff claims that "substantially all" of the fraudulent  
17 clicks from that site can be traced directly to traffic originating from websites  
18 owned or controlled by Defendant. *Id.* Between August and December 2012,  
19 Google deducted an additional \$12,500 from Plaintiff's AdSense account as  
20 additional compensation for the unusually high volume of click-fraud traffic  
21 originating from Plaintiff's websites, substantially all of which was traceable to  
22 traffic originating from Defendant's websites. *Id.* ¶¶ 21, 33.

23  
24  
25 <sup>2</sup> What Plaintiff fails to note is that it was an arbitrager. Plaintiff turned around and sold the  
26 clicks that it bought from LookSmart for \$105,273.92, *Id.* ¶ 18 to Google for a substantial profit.  
27 Per the allegations, Google deducted \$380,000 from WeBoost's AdSense account due to  
28 suspicious click fraud activity, substantially all of which came from websites affiliated with  
Defendant. *Id.* ¶ 19.

1 Eventually, Plaintiff's AdSense account was reduced to a negative balance,  
2 and in December 2012, Plaintiff abandoned the account. *Id.* ¶ 36. Plaintiff's  
3 business relationship with Google deteriorated, leading it to use less profitable pay-  
4 per-click intermediary alternatives, and only recently has Plaintiff begun to repair  
5 its relationship with Google, though its previous levels of usage and profit have yet  
6 to return. *Id.* ¶ 37.

7 Plaintiff contends that Defendant had an incentive to generate click fraud  
8 traffic, because it bills Plaintiff based on the number of clicks **generated on its**  
9 **websites**. *Id.* ¶ 21. Plaintiff also states that even if Defendant was not directly  
10 responsible for generating the click-fraud traffic at issue, it had a duty to take steps  
11 to detect click-fraud traffic on its own websites and then to reduce the number of  
12 clicks for which it billed Plaintiff. *Id.* ¶ 32.

13 Plaintiff's only new factual allegations in the FAC are included Paragraphs  
14 22-31. In Paragraph 22, Plaintiff again alleges that LookSmart generated "click  
15 fraud" traffic on its websites. See *Id.* ¶¶ 7, 8, 17, 21, 22 & 32. However, now  
16 Plaintiff alleges that the "click fraud" traffic was generated by specific LookSmart  
17 websites and that these were "bogus websites" designed only to generate "click  
18 fraud" traffic. *Id.* ¶¶ 23-28. Further, Plaintiff alleges that these bogus websites  
19 were concealed from Plaintiff and existed prior to the execution of its October 31,  
20 2011 contract with LookSmart. *Id.* ¶¶ 29-30. Plaintiff includes the conclusory  
21 allegation that LookSmart's conduct is independent of their contractual  
22 relationship and gives rise to independent tort liability. *Id.* ¶ 31.

23 Based on these facts, Plaintiff again asserts the following causes of action  
24 against Defendant: (1) breach of contract, (2) breach of the covenant of good faith  
25 and fair dealing, (3) fraudulent concealment, (4-5) negligent and intentional  
26 interference with prospective economic advantage, (6) intentional interference with  
27

1 contractual relations, and (7) violation of California's Unfair Competition Law,  
2 Cal. Bus. & Prof. Code § 17200 et seq.

### 3 **III. LEGAL STANDARDS**

#### 4 **A. Motion to Dismiss**

5 A complaint must be dismissed under Federal Rule 12(b)(6) for failure to  
6 state a claim upon which relief can be granted if it fails to plead “enough facts to  
7 state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*,  
8 550 U.S. 554, 570 (2007). While the federal rules do not require a heightened  
9 pleading of specifics, “a plaintiff’s obligation to provide the ‘grounds’ of his  
10 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic  
11 recitation of the elements of a cause of action will not do.” *Id.* at 555. In other  
12 words, “[f]actual allegations must be enough to raise a right to relief above the  
13 speculative level . . . .” *Id.*

14 Courts will liberally construe the complaint in the light most favorable to the  
15 plaintiff and accept the factual allegations as true. *See Id.* at 555. However, courts  
16 “‘are not bound to accept as true a legal conclusion couched as a factual  
17 allegation.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) (quoting *Twombly*,  
18 550 U.S. at 555). Further, “[w]here the allegations show on the face of the  
19 complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is  
20 appropriate.” *Benton v. Merrill Lynch & Co.*, 524 F.3d 866, 870 (8th Cir.2008  
21 (citation omitted). When considering a motion to dismiss, a court can “begin by  
22 identifying pleadings that, because they are no more than conclusions, are not  
23 entitled to the assumption of truth.” *Id.* Legal conclusions must be supported by  
24 factual allegations to survive a motion to dismiss. *Id.*

25 Additionally, because Rule 12(b)(6) focuses on the “sufficiency” of a claim  
26 rather than the claim’s substantive merits, “a court may [typically] look only at the  
27 face of the complaint to decide a motion to dismiss.” *Van Buskirk v. Cable News*

1 *Network, Inc.*, 284 F.3d 977, 980 (9th Cir.2002). However, when the complaint is  
2 accompanied by attached documents, or refers to documents which are central to  
3 the claim, such documents are deemed part of the complaint and are properly  
4 considered in evaluating the merits of a Rule 12(b)(6) motion. *Stac Electronics*, 89  
5 F.3d at 1405 n. 4. “The court may treat such a document as ‘part of the complaint,  
6 and thus may assume that its contents are true for purposes of a motion to dismiss  
7 under Rule 12(b)(6).” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)  
8 (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003).

### 9 **B. Summary Judgment**

10 Summary judgment is appropriate where “there is no genuine issue as to any  
11 material fact” and “the moving party is entitled to a judgment as a matter of law.  
12 Fed.R.Civ.P. 56(c). The moving party has the initial burden of identifying relevant  
13 portions of the record that demonstrate the absence of a fact or facts necessary for  
14 one or more essential elements of each cause of action upon which the moving  
15 party seeks judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

16 If the moving party sustains its burden, the nonmoving party must then  
17 identify specific facts, drawn from materials on file, that demonstrate that there is a  
18 dispute as to material facts on the elements that the moving party has contested.  
19 *See Fed.R.Civ.P. 56(c)*. The nonmoving party must not simply rely on the  
20 pleadings and must do more than make conclusory allegations in an affidavit.  
21 *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990). Summary judgment must  
22 be granted for the moving party if the nonmoving party “fails to make a showing  
23 sufficient to establish the existence of an element essential to that party’s case, and  
24 on which that party will bear the burden of proof at trial.” *Celotex* at 322.

25 In light of the facts presented by the nonmoving party, along with any  
26 undisputed facts, the Court must decide whether the moving party is entitled to  
27 judgment as a matter of law. *See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors*

1 *Ass'n*, 809 F.2d 626, 631 n. 3 (9th Cir.1987). “[T]he inferences to be drawn from  
2 the underlying facts . . . must be viewed in the light most favorable to the party  
3 opposing the motion.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475  
4 U.S. 574, 587 (1986). Summary judgment for the moving party is proper when a  
5 rational trier of fact would not be able to find for the nonmoving party on the claim  
6 or claims at issue. *Id.*

#### 7 **IV. ARGUMENT**

##### 8 **A. The Economic Loss Rule Bars Plaintiff’s Claims For Tort Relief**

9 In relevant part, this Court ruled as follows:

10 Plaintiff’s intentional tort claims are barred by the  
11 economic loss rule. Under the rule, parties alleging fraud  
12 or deceit in connection with a contract must establish  
13 tortious conduct independent of a breach of the contract -  
14 - not just violation of a promise that undermines a party’s  
15 expectations under the contract. *Robinson Helicopter*, 34  
16 Cal. 4th at 990. Here, any duties Defendant owed to  
17 Plaintiff apart from the general duty to act reasonably  
18 arose at the moment of contract formation. See *Id.* at 991;  
19 see also *United Guar. Mortg. Indem. Co. v. Countrywide*  
20 *Fin. Corp.*, 660 F. Supp. 2d 1163, 1184 (C.D. Cal. 2009).  
Defendant assumed no other duties. Cf. *Robinson*  
*Helicopter*, 34 Cal. 4th at 991 (economic loss rule did not  
apply partly because the defendant separately issued  
affirmative representations to the plaintiff).

21 Plaintiff has failed to allege any conduct that is  
22 independent from the promises the parties made during  
23 the course of their contractual relationship, since even the  
24 basis for Plaintiff’s intentional interference claims is that  
25 Defendant interfered with Plaintiff’s contracts and  
26 relationships by breaching its representation, from  
27 Section 5(a) of the T&C, to invoice Plaintiff only for  
28 legitimate clicks. See Opp’n at 7-8; Compl. ¶¶ 44-58.  
Likewise, the T&C accounts for the bases of Plaintiff’s  
fraudulent concealment and UCL fraud claim, since

1 Defendant's obligation to monitor pay-per-click traffic  
2 for which it invoiced Plaintiff arose exclusively from the  
3 contract. See *United*, 660 F. Supp. 2d at 1184; *Food*  
4 *Safety Net Svcs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App.  
5 4th 1118, 1132 (Cal. Ct. App. 2012). Plaintiff's negligent  
6 interference claim is somewhat distinct from the above  
7 analysis because it is based on negligence, not intent.  
8 However, California law holds that contracts exempting  
9 parties from liability for ordinary negligence are valid if  
10 the public interest is not involved and no statute prohibits  
11 such a contract. See *United*, 660 F. Supp. 2d at 1180.

9 These two sophisticated parties reached a bargain  
10 allocating the risks of doing business, and the provisions  
11 of their agreement displace tort duties with regard to  
12 Defendant's obligations under the contract. See *Reserver*  
13 *Ins. Co. v. Pisciotto*, 30 Cal. 3d 800, 814 (Cal. 1982) ("It  
14 is axiomatic that absent a violation of public policy, a  
15 statute, or a constitutional provision, the parties to a  
16 private agreement may allocate risks in any manner they  
17 may choose."). Plaintiff allocated risk for its negligence  
18 claim per the T&C, and its intentional tort claims are  
19 barred by the economic loss rule, per above. Plaintiff's  
20 negligent and intentional interference, fraudulent  
21 concealment, and UCL claims are all DISMISSED.  
22 Plaintiff has leave to amend these claims if it can state  
23 facts indicating that the claims would not be subject to  
24 the economic loss rule.

20 February 28, 2014 Order 10:15-12:5.<sup>3</sup>

21 Plaintiff has failed to state new facts indicating that the alleged tort claims  
22 would not be subject to the economic loss rule. Plaintiff's FAC does include some  
23 new paragraphs. See FAC 22-31, 50-51, 60 & 67. Plaintiff's only new factual  
24 allegations in the FAC are included Paragraphs 22-31. In Paragraph 22, Plaintiff  
25

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26  
27 <sup>3</sup> For the sake of brevity, LookSmart incorporates the February 28, 2014 Order as stated in full  
28 herein.

again alleges that LookSmart generated “click fraud” traffic on its websites. See *Id.* ¶¶ 7, 8, 17, 21, 22 & 32. However, now Plaintiff alleges that the “click fraud” traffic was generated by **specific** LookSmart websites and that these were “bogus websites” designed only to generate “click fraud” traffic. *Id.* ¶¶ 23-28. Further, Plaintiff alleges that these bogus websites were concealed from Plaintiff and existed prior to the execution of its October 31, 2011 contract with LookSmart. *Id.* ¶¶ 29-30. Plaintiff includes the conclusory allegation that LookSmart’s conduct is independent of their contractual relationship and gives rise to independent tort liability. *Id.* ¶ 31. Plaintiff summarizes these purportedly new allegations by stating “LookSmart engaged in wrongful conduct by fabricating ‘click fraud’ in order to increase the payments that were purportedly owed by WeBoost.” *Id.* ¶¶ 60, 67.

These purported new “click fraud” allegations are merely a repackaging of the same old “click fraud” allegations and are subject to the economic loss rule because they do not arise independently of the breach of contract claims. Plaintiff previously alleged that LookSmart operated its own websites and generated “click fraud” traffic on its websites. See Complaint ¶¶ 7, 8, 17, 21, & 22 and February 28, 2014 Order 2:21-23, 5:3, 5:7-13 (“additional \$191,000 in gross revenue . . . was being deducted from Plaintiff’s AdSense account due to click fraud originating on **Plaintiff’s** website” “‘substantially all’ of the fraudulent clicks from that site can be traced directly to traffic originating from websites owned or controlled by Defendant” “all of which was traceable to traffic originating from Defendant’s websites”). The basis of every allegation is that LookSmart breached its **contractual** representation to invoice Plaintiff only for legitimate clicks. Even if these new allegations were true (which they are not), LookSmart’s obligations regarding pay-per-click traffic arose exclusively from the contract. These two sophisticated parties reached a bargain allocating the risks of doing business,

1 expressly including provisions for what Plaintiff alleges is “click fraud” in the  
2 contract<sup>4</sup> and the provisions that displace tort duties with regard to LookSmart’s  
3 obligations under the contract. Plaintiff’s tort claims are barred by the economic  
4 loss rule and the T&C.

5 **B. The T&C is Not Ambiguous and its Indemnification Provision Does**  
6 **Not Save Plaintiff’s Claims**

7 For the sake of brevity, LookSmart incorporates the February 28, 2014  
8 Order from 12:18 through 14:18 as stated in full herein.

9 **C. The Court Should Enter Partial Summary Judgment Limiting**  
10 **LookSmart’s Liability**

11 This Court ruled that “regardless of whether Plaintiff is ultimately able to  
12 recover on a tort or contract claim, Section 8 would cap Plaintiff’s damages to the  
13 amount it paid under the contract.” February 28, 2014 Order 13:13. Based upon  
14 that ruling, the T&C and the fact that Plaintiff has pleaded that Plaintiff paid  
15 Defendant \$105,273.92, pursuant to seven invoices FAC ¶ 18, LookSmart  
16 respectfully request that the Court issue a partial summary judgment order limiting  
17 WeBoost’s recovery, if any, to an amount less than or equal to \$105,273.92.

18 **V. CONCLUSION**

19 Based upon the foregoing, LookSmart respectfully requests that the Court  
20 dismiss with prejudice WeBoost’s causes of action for Fraudulent Concealment,  
21

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22 <sup>4</sup> The T&C establishes that the pay-per-click “charges will be determined solely based on  
23 LookSmart’s click tracking technology.” *See* FAC Ex. A, Pg. 3 Section C, “All Accounts”.  
24 Furthermore, the T&C contemplates challenging the pay-per-click charges that are invoiced by  
25 LookSmart and has a reconciliation system in place to do so. *Id.* WeBoost did not utilize the  
26 reconciliation system. Instead, it filed this action and alleged that what “WeBoost was paying  
27 LookSmart [for] was not legitimate pay-per-click traffic at all but rather illegitimate ‘click-  
28 fraud’.” *See* FAC ¶ 49. This allegation forms the basis of WeBoost’s breach of contract claim.  
*Id.* Furthermore, this same allegation of illegitimate pay-per-click charges, which WeBoost calls  
“click fraud”, is the basis of every cause of action stated by WeBoost. *See* Complaint ¶¶ 40, 42,  
46, 49, 60, 67, 74 and 78.



1 Negligent Interference With Prospective Economic Advantage, Intentional  
2 Interference With Prospective Economic Advantage, Intentional Interference With  
3 Contractual Relations and Violation of Cal. Bus. & Prof. Code § 17200, and issue  
4 a partial summary judgment order limiting WeBoost's recovery, if any, to an  
5 amount less than or equal to \$105,273.92.

6 **RIMAC MARTIN, P.C.**  
7

8 Dated: May 2, 2014

By: /s/ William Reilly

9 WILLIAM REILLY  
10 Attorneys for Defendant  
11 LOOKSMART LTD  
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1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of San Francisco, State of California. I am over the  
3 age of 18 and not a party to the within action. My business address is 1051 Divisadero  
4 Street, San Francisco, California 94115.

5 On May 2, 2014, the following document is being filed electronically and will be  
6 available for viewing and downloading from the Court's CM/ECF system:

7 ***DEFENDANTS' MOTION TO DISMISS AND FOR PARTIAL SUMMARY***  
8 ***JUDGMENT***

9 The Notice of Electronic Case Filing Automatically generated by the system and  
10 sent to all parties entitled to service under the Federal Rules of Civil Procedure and the  
11 Local Rules of the United States District Court, Northern District of California, who have  
12 consented to electronic service shall constitute service of the filed document to all such  
13 parties.

14 Executed on May 2, 2014 at San Francisco, California.

15 I declare under penalty of perjury that I am employed in the office of a member of  
16 the bar of this Court at whose direction the service was made and that the foregoing is  
17 true and correct.

18 Robin A. Hale  
19 (Type or print name)

20 /s/ Robin A. Hale  
21 (Signature)